



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

Ryezak Oil Company
P.O. Box 355
Rumney, NH 03266-0355

Re: Ryezak Oil Co., Route 25, Rumney, NH
DES Site Number 199707033

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 03-036**

September 23, 2003

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing ("Notice") is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Ryezak Oil Company, pursuant to RSA 146-A and Env-Wm 1402. The Division is proposing that fines totaling \$2,400 be imposed against Ryezak Oil Company for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Ryezak Oil Company, is a Corporation registered to do business in New Hampshire having a mailing address of P.O. Box 355, Rumney, NH 03266-0355.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 146-A authorizes Department of Environmental Services ("DES") to minimize contamination of the waters and land of the state due to improper storage and handling of petroleum by establishing requirements for the operation of aboveground petroleum storage facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 1402 to implement this program.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto. Pursuant to RSA 146-C:15, the Commissioner of DES has adopted Env-C 615 to establish the schedule of fines for such violations relating to aboveground storage tanks.
3. Ryezak Oil Company is the owner of six (6) aboveground storage tanks ("AST"): one 15,000-gallon diesel tank (active); one 15,000-gallon kerosene tank (active); one 20,000-gallon #2 heating oil tank (active); one 15,000-gallon #2 heating oil tank (out-of-service); one 1,000-

gallon kerosene tank (permanently closed); and one 500-gallon off road fuel tank (unregistered) located at Ryezak Oil Co., Rte 25, Rumney, NH, and further identified by the DES site number 199707033 and the AST identification number 970733A ("the Facility").

4. The AST systems at the Facility are subject to the requirements of RSA Chapter 146-A and NH Administrative Rules Env-Wm 1402.

5. Env-Wm 1402.05 requires the owner of an AST facility to accurately register all AST systems at the facility with DES. The approximately 500-gallon AST storing off-road kerosene is not registered with DES.

6. Env-Wm 1402.12(d) requires out of service ASTs to be prominently stenciled with the words "out of service" in large, easily visible block letters. The 15,000-gallon #2 heating oil AST (Tank 3) that was removed from service in June 1991 was not marked as "out of service". Tank 3 must be stenciled with the words "Out of Service".

7. Env-Wm 1402.18(e) requires AST systems to be marked with the tank number corresponding to the tank number specified on the registration form, the product stored, appropriate National Fire Protection Association ("NFPA") fire rating symbol, and the safe fill height or volume. Tank lettering shall be at least 2 inches in height and in a color contrasting with the color of the tank. The unregistered off-road kerosene AST was missing its tank number, fire rating symbol, and safe fill height. The off-road kerosene AST needs to be marked with its tank number, appropriate NFPA fire rating symbol, and safe fill height corresponding to 90% of the total capacity of the tank.

8. Part Env-Wm 1402 became effective on April 25, 1997.

9. DES notified Ryezak Oil Company of the deficiencies identified in Paragraph III.5, III.6, and III.7 above in a Notice of Findings letter dated December 4, 2002. Ryezak Oil Company, Inc. was allowed 45-days to correct the noted deficiencies to avoid further enforcement action.

10. DES notified Ryezak Oil Company in a Notice of Violation letter dated May 13, 2003 that DES would initiate administrative fine proceedings in 30 days for the registration requirement, out of service requirement, each marking standard that is not met and for the overfill prevention devices not installed.

11. To date, Ryezak Oil Company, Inc. has been unresponsive to DES in regards to the requirements specified in the DES letters identified in Paragraphs III.9 and III.10 above.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Ryezak Oil Company, has violated Env-Wm 1402.05 by failing to register the approximately 500-gallon AST storing off-road kerosene. For this violation, DES is seeking a fine of \$1500 pursuant to Env-C 615.02(a).

2. Ryezak Oil Company, has violated Env-Wm 1402.12(d) by failing to stencil mark the

15,000-gallon AST (Tank 3) as "out of service". For this violation, DES is seeking a fine of \$400 pursuant to Env-C 615(c).

3. Ryezak Oil Company has violated Env-Wm 1402.18(e) by failing to mark: the off-road kerosene tank with the tank number; the appropriate national fire rating system symbol as established by NFPA-704, Identification of Fire Hazards and Materials; and the safe fill height of the tank pursuant to Env-Wm 1402.18(e). For these violations, DES is seeking a fine of \$500 pursuant to Env-C 615.02.

The total fine being sought is \$2,400.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than September 23, 2003 using the enclosed colored form.

1. If Ryezak Oil Company would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If Ryezak Oil Company chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Ryezak Oil Company wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Ryezak Oil Company's interest in settling.

Ryezak Oil Company is not required to be represented by an attorney. If Ryezak Oil Company chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Ryezak Oil Company committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Ryezak Oil Company committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- ☆ Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Ryezak Oil Company proves, by a preponderance of the evidence,**

applies in this case:

1. The violation was a one-time or non-continuing violation, **and** Ryezak Oil Company did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Ryezak Oil Company did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Ryezak Oil Company was making a good faith effort to comply with the requirement that was violated.
3. Ryezak Oil Company has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Ryezak Oil Company's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Ryezak Oil Company committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Ryezak Oil Company's opportunity to present testimony and evidence that Ryezak Oil Company did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Ryezak Oil Company has any evidence, such as photographs, business records or other documents, that believes show that Ryezak Oil Company did not commit the violation(s) or that otherwise support Ryezak Oil Company's position, Ryezak Oil Company should bring the evidence to the hearing. Ryezak Oil Company may also bring witnesses (other people) to the hearing to testify on Ryezak Oil Company's behalf.

If Ryezak Oil Company wishes to have an informal meeting to discuss the issues, Ryezak Oil Company must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Ryezak Oil Company has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

COPY

Philip J. O'Brien, Ph.D., P.G., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2002*)

cc: Mark Harbaugh, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Mike Juranty, DES WMD
Public Information Officer, DES PIP Office

***** RETURN THIS PAGE ONLY *****

**RYEZAK OIL COMPANY,
IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN October 23, 2003

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Ryezak Oil Company

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I request to have a **prehearing conference** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Ryezak Oil Company

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,400 paid to "Treasurer, State of New Hampshire" is enclosed.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:

Michael Sclafani, Legal Assistant

Department of Environmental Services ~ Legal Unit

29 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*